

# EXHIBIT 10

Perri, III, Ph.D., Matthew  
Orlando, FL

May 1, 2009

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY)MDL NO. 1456

AVERAGE WHOLESALE PRICE )

LITIGATION )CIVIL ACTION:

THIS DOCUMENT RELATES TO )01-CV-12257-PBS

U.S. ex rel. Ven-A-Care of the )Judge Patti B. Saris

Florida Keys, Inc. v. Abbott )Chief Magistrate

Laboratories, Inc., )Judge Marianne B. Bowler

No. 07-CV-11618-PBS )CONFIDENTIAL

VIDEOTAPED DEPOSITION OF MATTHEW PERRI, III, Ph.D.

Taken on Behalf of the Defendant

DATE TAKEN: May 1, 2009

TIME: 8:30 a.m. - 4:35 p.m.

PLACE: Hyatt Regency Airport  
9300 Airport Boulevard  
Yeager Conference Room  
Suite 1066  
Orlando, Florida

Stenographically Reported by:

Karen S. Rhine, FPR

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<p style="text-align: right;">Page 102</p> <p>1 A. And we're confining our discussion to the 2 Erythromycin Sterate 250 milligram tablet right now and 3 we're not comparing it to a different Erythromycin 4 product. We're comparing it strictly to other 5 Erythromycin Sterate 250 milligram -- 6 Q. This is a scenario where the physician writes a 7 script for Erythromycin Sterate 250 milligrams and the 8 pharmacist doesn't attempt to call the physician to get 9 the physician to write a different script. 10 A. In that case the spread comparison would be 11 between whatever the established level of reimbursement 12 in Tennessee was minus the actual acquisition cost to 13 that provider. 14 Q. So Abbott going into one of the pharmacies or 15 in any way trying to market that its AWP is high would 16 have no market effect, right? 17 A. If you take one step back from your 18 hypothetical and you remember that the AWP is based on a 19 percentage of the list price or the WAC price, if then 20 those pharmacists who are purchasing in Tennessee and 21 reporting their prices, even though it has nothing to do 22 with AWP, there would be a relationship between the WAC</p>	<p style="text-align: right;">Page 104</p> <p>1 A. Yes. 2 MR. ANDERSON: Object. 3 BY MR. BERLIN: 4 Q. And with that situation -- 5 A. Excuse me. Unless Abbott's AWP was the lowest 6 of all the other AWP's, in which case it would be the AWP 7 that the FUL was being based on. 8 Q. But having not studied the FULs you're not able 9 to tell us whether that ever occurred on any the Erys, 10 right? 11 A. That's correct. 12 Q. And there's no indication in the record that 13 Abbott was trying to make that determination either, 14 right? 15 A. Not that I saw. 16 Q. So with that scenario of Abbott going out and 17 marketing the difference between its AWP and the 18 contract price would not be an effective form of 19 marketing the spread, correct? 20 MR. ANDERSON: Objection to form. 21 THE WITNESS: I generally disagree with that 22 because the providers that we're talking about here,</p>
<p style="text-align: right;">Page 103</p> <p>1 or the list price that they were then basing their 2 responses to the State of Tennessee on. That would be 3 parallel to the AWP price, just a notch lower. 4 So while the AWP per se would have no impact, the 5 NDC data AWP, which is WAC or list, would have an 6 impact. 7 Q. Let's take the FUL. Federal Upper Limit is the 8 lowest reported price plus a hundred and fifty percent, 9 right? 10 A. Actually I don't want to correct you because I 11 don't know if this is true or not, but I think it's a 12 hundred and fifty percent of the lowest reported price, 13 not plus a hundred and fifty percent. 14 Q. You're correct. I misspoke. So it's a hundred 15 and fifty percent of the lowest reported price, right? 16 A. I believe so. To the best of my knowledge. 17 Q. If Ery is on a FUL, and again putting aside 18 your example of where the pharmacy is going to call the 19 physician and try to convince the physician to write 20 another script, Abbott can jack up the price of its AWP 21 until kingdom come, but that's not going to raise the 22 price of the FUL, right?</p>	<p style="text-align: right;">Page 105</p> <p>1 as Abbott, are knowledgeable of the relationship 2 between AWP and other prices. 3 And to the extent that I have an AWP or an 4 estimated AWP and I have acquisition prices which 5 are either contract, in this case base deal, WAC or 6 list, I know there's a fixed relationship in most 7 cases between these prices; at least between the WAC 8 or list and AWP. 9 So as a pharmacist, again going back to why 10 would the pharmacist want to know this, because 11 they're maximizing their profitability. They want 12 to buy at the lowest and get reimbursed at the 13 highest to maximize that profitability. 14 So I can't agree to anything where you're 15 saying that simply by virtue of using AWP that 16 they're not still communicating information about 17 their pricing to their customers. 18 BY MR. BERLIN: 19 Q. We already agree that Abbott could increase its 20 AWP until kingdom come and unless it was to begin with 21 the lowest AWP in the MAC array or the FUL array, it 22 wouldn't have an impact on that FUL.</p>

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<p style="text-align: right;">Page 106</p> <p>1 A. We agreed with respect to FUL that that would 2 be true -- 3 Q. Yes. 4 A. -- with the exception that was noted. 5 Q. And this case isn't about where providers 6 purchase the Ery drugs at the WAC or the list price, 7 right? That's not what the government is complaining 8 about. They're complaining about where there were 9 purchases at a contract price that was lower than what 10 the reported prices were. 11 MR. ANDERSON: Objection to form. 12 THE WITNESS: I think based on my reading of 13 the Complaint, which we talked about just briefly, 14 my understanding was the government was unhappy 15 about the differential in the spread amount between 16 the reimbursement, Medicaid reimbursement, and the 17 actual acquisition cost of providers regardless of 18 which prices, we're specifically looking at WAC, 19 list or AWP. 20 BY MR. BERLIN: 21 Q. And I understand you never were responsible for 22 purchasing at any of the pharmacies you worked at. Is</p>	<p style="text-align: right;">Page 108</p> <p>1 that system works has marketing significance; not your 2 understanding, but a manufacturer having an 3 understanding of how that works? 4 A. The marketing significance of that issue is how 5 the pharmacists use that in their decision making. FUL, 6 MAC or AWP doesn't matter to the pharmacist. What 7 matters to the pharmacist is the reimbursement spread. 8 Q. Right. And what matters is the reimbursement 9 spread and let's make an assumption that regardless of 10 what product they purchase they're going to get the same 11 reimbursement if the drug is MAC or FUL. 12 MR. ANDERSON: Objection to form. 13 THE WITNESS: Okay. 14 BY MR. BERLIN: 15 Q. So no matter if they say I'm going to buy Mylan 16 or I'm going to buy Abbott, they're going to get the 17 same reimbursement from the Medicaid program. 18 A. Under your assumption, yes. 19 MR. ANDERSON: Objection to form. 20 BY MR. BERLIN: 21 Q. How would Abbott advertising a high AWP impact 22 their purchasing decision under that scenario? It</p>
<p style="text-align: right;">Page 107</p> <p>1 that correct? 2 A. I was never responsible for purchasing. I did 3 place orders. 4 Q. For the person who's responsible for 5 purchasing, regardless of which Ery NDC they purchased 6 among the generic equivalents for that, they're going to 7 get the same reimbursement under the FUL, right? 8 MR. ANDERSON: Objection to form. 9 THE WITNESS: Mr. Berlin, I wish I had a 10 greater knowledge of FUL and MAC and everything so I 11 could talk more intelligently with you about this 12 subject. I've been trying really hard for the last 13 hour or so to answer these questions. 14 It is outside the area of my expertise and the 15 expertise that I've applied in this case. I think 16 that it's related and that's why I'm trying to 17 answer these questions the best that I can. 18 But the issue of the FUL and so forth, it 19 troubles me because I'm not one hundred percent sure 20 that I understand how that system works. 21 BY MR. BERLIN: 22 Q. Do you think having an understanding of how</p>	<p style="text-align: right;">Page 109</p> <p>1 wouldn't, would it? 2 MR. ANDERSON: Objection to form. 3 THE WITNESS: In the scenario that we've been 4 talking about where there's an FUL, accepting the 5 possibility that Abbott's product was the lowest 6 priced product on the market, advertising an AWP 7 would not inform well a pharmacist's understanding 8 of what their reimbursement amount would be. 9 It might provide some information to them about 10 the relative level pricing in the marketplace, but 11 it would not inform their reimbursement amount. 12 So the answer to your question is essentially 13 that the FUL in the scenario that we're talking 14 about, this hypothetical, the ability to market a 15 higher reimbursement spread would not be informed by 16 the AWP. 17 It would, however, be informed by the actual 18 spread, the amount the pharmacist would be getting 19 reimbursed by that Medicaid program which the 20 pharmacist would know. 21 BY MR. BERLIN: 22 Q. Meaning the difference between the</p>

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